IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 571 of 2000.

Date of decision:28.9.2007.

State of H.P. .. ..Appellant

Versus

Parkash Chand and another .. ..Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.

Whether approved for reporting ? No

For the Appellant: Mr.J.S.Guleria, Law Officer.

For the respondents:None.

Deepak Gupta, J.(oral)

This Appeal is directed against the judgment of the Judicial Magistrate Ist Class-II, Palampur, District Kangra, H.P. in Criminal Case No.63-II of 98 whereby he has acquitted the accused of having committed offences punishable under Sections 323, 451 and 506 IPC.

The prosecution story, in brief, is that on 22.9.1997 at about 8 a.m. the accused persons who are husband and wife in furtherance of common intention committed criminal trespass into the courtyard of the house of Manga Ram and beat up Simsa Devi wife of Manga Ram and Hoshiar Singh son of Manga Ram and also threatened to kill them. It is alleged that this incident was witnessed by Tarmodu Ram and Knakadu Ram.

In her statement under Section 114 Cr.P.C. Ext.PW-1/A, Smt.Simsa Devi on whose statement the FIR Ext.PW-6/A was recorded has stated that she was beaten by Indira Devi and Parkash Chand only stood on the spot.

No active role was ascribed to Parkash Chand. However, while appearing in the witness box Simsa Devi has given a totally different version which is contrary to her original statement Ext.PW-1/A and the FIR Ext.PW-6/A. On oath before the Court she has stated that both she and Hoshiar Singh were beaten up by both the accused.

The version of PW-3 Hoshiar Singh is totally different. According to him Parkash Chand beat him with fist blows whereas the accused Indira Devi had slapped him. This is also not in accordance with the facts mentioned in the FIR. He further states that the accused persons also beat his father Manga Ram which fact is neither stated by Manga Ram himself nor by complainant Simsa Devi. This fact is also not stated in the FIR.

The independent witness PW-4 Tarmodu Ram has turned hostile and has stated that no incident took place in his presence. According to PW-5 Knakadu Ram, Parkash Chand beat Hoshiar Singh and also that Parkash Chand accused caught hold of Simsa Devi. This is also not mentioned in the FIR. This witness admits that he is not on visiting terms with the accused persons since there is a litigation pending between him and the accused pending before the Tehsildar and SDM, Jaisinghpur.

The version given by the witnesses in Court is a highly improved and exaggerated version. It is totally contradictory to the original complaint. In the

original complaint no active role was ascribed to accused Parkash Chand and it was only alleged that accused Indira Devi had beaten up Simsa and her son Hoshiar Singh. In Court the version given is totally different and the more active role is ascribed to Parkash Chand. The only witnesses who have supported the prosecution case are the interested witnesses of the family and Knakadu Ram who is admittedly having inimical relations with the accused.

Another very important factor is that neither Simsa Devi nor Hoshiar Singh were got medically examined. There is no corroborative evidence to support their version. The learned trial Court has rightly given the benefit of doubt to the accused. There is no error in the judgment of the learned trial Court.

In view of the above discussion there is no merit in the appeal which is accordingly dismissed. Bail bonds furnished by the accused are discharged.

September 28, 2007. **(Deepak Gupta),**
PV **Judge**